OPERATION OF PROVISIONS REGULATING FARES IN STREET RAILROAD FRANCHISES IN TERRITORY SUBSEQUENTLY ANNEXED TO CITY.

AMONG the serious problems of the day which municipal corporations are called upon to handle and to solve is that of easy, rapid and inexpensive transportation of its citizens. In the solution of this problem the representatives of the public must deal with the skilled, trained officers of the street railway corporation; and these officers, in nearly all cases, bend every effort to lift from the shoulders of the corporation its just and equal burden of public duty and improvement, and to throw it upon the back of the already overburdened citizen. One of the most serious of these problems is the amount of fare which such a corporation shall be permitted to collect for passage over its lines within the limits of the municipality. As these fares are in reality a direct tax upon every individual within the corporate limits of a city, the amount collected, even though it vary but a cent or two for each passenger handled, is of vital importance to the community and to the individual citizen; to the community, because if the fare is excessive, or discriminates in favor of one section of a city as against another, it retards development; and to the individual citizen for the reason that it converts a necessity into a burdensome tax. Each day the problem becomes more complex and intricate in its solution, but out of the experience of the past the various municipalities, instead of granting the old blanket franchise, as was done in the early days of the electric street car, now place various restrictions and reservations in the franchise, which surrenders to the corporation valuable rights in their streets and other public places; and among these restrictions and reservations is the maximum fare which they are permitted to collect within the limits of the municipality.

This restriction as to the maximum fare which a street railway may collect within the corporate limits having been inserted into the franchise there can be no question, during the

life of the franchise, within the then existing limits of the city, as to the maximum fare which said railway may collect; but if, subsequent to the granting of the franchise, the municipality should annex new territory in which the said railway ran prior to the time of annexation, the question then arises as to whether or not the company is bound under the franchise, i. e. whether the restriction as to maximum fares the company may collect within the limits of the city extends with the limits of the municipality, or whether the privileges which the company has secured prior to the extension of the limits of the city are in the nature of vested rights.

As the development of the electric street railroad has taken place within the past few years, there are but few decisions on the question at issue, and all of these have been decided within the past decade, most of them within the past few years. They are, however, practically unanimous in their ruling.

The leading case on this subject, and the one upon which all of the street railway decisions are based, is St. Louis Gaslight Co. *v.* City of St. Louis.[1] In 1846 the city of St. Louis made a contract with the gas company for the erection of five lamps on each square or block within that portion of the city bounded on the east by Front Street, on the west by Fourth Street, on the north by Cherry Street and Franklin Avenue, and on the south by Myrtle Street, together with an equal number of lamps on the west side of Fourth Street, as would complete the lighting of said street from Myrtle Street to Franklin Avenue. By the third provision of the contract the gas company "agrees to erect one-half of the lamps herein contracted for within one year, and the remaining half within two years, from and after the first of October, 1846." During the first year 263 lamps were erected; 263 were erected afterwards. At the time of the suit there were 263 lamps within the district contracted for, and 2196 lamps outside of said disrict. The gas company claimed that for the lighting of the 2196 lamps outside of the district it was not bound by the terms and provisions of the contract of January, 1846, and set up the fact that the lamps

[1] 46 Mo. 121.

outside of the contracted district were beyond the city limits as they existed at the time of the contract. In disposing of this contention the court said:

> "Counsel submit an elaborate argument to show that the contract could not have extended beyond the city limits as then existing; that, so far as it operated upon the extensions, it was ultra vires and void. Had the contract, by its terms, provided for lighting the streets beyond such limits, it would have been so far inoperative as an exercise of territorial jurisdiction beyond its range. But it contained no such provision. The additional orders for lamps were all to be within the city, and the city is a unit, though with changing boundaries. There might be a question as to the extension of the exclusive rights of the plaintiff, for grants of monopolies are to be strictly construed; but there is no doubt that a city ordinance or a city contract, designed for the city at large, operates throughout its boundaries whatever their change."

In the case of People *v.* Detroit United Railway,[2] the Detroit City Railway Company obtained a franchise from the city of Detroit in 1862. The city limits at that time were located on Mt. Elliott Avenue. The limits were afterwards extended to Baldwin Avenue, and later, in 1889, an ordinance passed by the council and accepted by the railway company provided for workingmen's tickets, eight for twenty-five cents, during certain hours, good over any of the lines of the said company in the city. The Detroit City Railway Company succeeded to all the rights and franchises of the former company. Later the defendant company purchased a street railway located wholly without the limits of the city, which had been built under authority of a franchise of the township of Grosse Point. In 1907 the limits of Detroit were extended to easterly limits of Jefferson Avenue, thereby including a large portion of the territory of the last mentioned road. The question in the case was whether the requirements of the ordinance of 1889, that passengers shall be conveyed to any point in the city limits, compelled the defendant company to transport passengers to the easterly limits of Jef-

[2] 162 Mich. 460, 125 N. W. 700.

ferson Avenue, notwithstanding that the defendant company was the assignee of the franchise granted by Grosse Point Township, and not within the limits of the city at the time the ordinance of 1889 was passed. A portion of the right to operate the street car system is derived from the city of Detroit, and a portion is derived from the township of Grosse Point. Annexation in each instance has enlarged the city's limits, and, in each instance, the street car company has denied its obligation to grant, between certain hours, workingmen's tickets over the line that was formerly in the county, but had been annexed to the city. In this case the court held:

> "We think it not unreasonable to hold that this mutual contract was made in view of the power of the legislature of the state to increase or diminish the territory within the city, and that neither the city nor the company contemplated that in case of an extension of the lines of the company within the city, either by purchase or acquisition from an other company, an increased fare should be demanded."

Upon a rehearing of this case,[3] the court says:

> "An ordinance accepted by a street railway company providing that at certain hours during the day the company should charge certain fares over its lines within the city must be construed strictly against the company, and, therefore, has equal effect in territory subsequently annexed to the city. * * *
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> "If an ordinance be enacted and afterwards the city limits be extended by adding thereto adjacent territory, no one would contend that a new ordinance must be passed in order to be operative in the newly acquired territory. It is true that that case involved a police regulation, but the authorities cited seem to make no distinction between such a regulation and an ordinance or contract relating to traffic regulation."[4]

In Dennison *v.* Seattle Ry. Co.,[5] the company operated a line of railway from the business section of Seattle southerly to the

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[3] 162 Mich. 460, 127 N. W. 748.

[4] See, also, Deneen *v.* Houghton County St. Ry. Co., 150 Mich. 235, 113 N. W. 1126.

[5] 64 Wash. 167, 116 Pac. 638.

city limits, and several miles beyond. One of the provisions of the franchise was that the railway company could establish a passenger fare not exceeding five cents for one continuous ride between points within the city limits, although transfers might be necessary. After the granting of the franchise, there was annexed to Seattle additional territory bounding its corporate limits on the south, through which annexed territory the road of the street car company ran.

The railway company contended that the provisions limiting to five cents fares between points within the city imposed no obligation upon it as to the amount of fare it might charge, except within the city limits as they existed at the time of the granting of the franchise, and that the provision had no application to territory annexed to the city thereafter. In denying the railway's contention, the court used the following language:

> "It seems to us that our decision in the case of Peterson *v.* Tacoma Railway & Power Co., 60 Wash. 406, 111 Pac. 338, completely answers this contention. In that case it was held that a franchise provision restricting the amount of fare within the city limits which a railway company operating under such franchise might charge, became applicable to territory thereafter annexed to the city, the same as to territory within the city at the time of the granting of the franchise. * * *
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> "It may be conceded that the railway is and has been at all times an interurban railway in so far as it serves the public by carrying passengers to and from points outside of the city; and that as such a railway it cannot be controlled by the city, or by this franchise, as to the fare charged for such service. It does not follow, however, that the railway is not a street railway and subject to control as such by the city within the city limits so far as the carriage of passengers within the city limits is concerned. If it is performing the service of an ordinary street railway under a franchise granted by the city within the city limits, as to that service, it is a street railway, though it may also be an interurban railway as to the service it renders in carrying passengers to and from points beyond the city limits."

The case of Indiana Ry. Co. *v.* Hoffman [6] is a case of contract

[6] 161 Ind. 593, 69 N. E. 399.

between the city of South Bend and the street railway company. There had been a number of franchises to different companies with different franchise provisions, and the Indiana Railway Company had become the successor in title to a number of the separate companies with their different franchises. Naturally, many disputes arose between the city and the railway company. To settle these, they entered into a contract by which transfer tickets were to be furnished passengers requesting the same who boarded the cars of the company at any point upon its line within the limits of the city of South Bend, and whose destination might be upon any other line of the railway company within the said city limits. After the adoption of this contract, South Bend extended the city limits easterly along Vistula Road, a distance of about one-half mile, thereby taking into the city a half mile of the Vistula public road, which had hitherto been outside of the city. The right to operate a street car line over this part of Vistula Road had been given to the company by the Board of Commissioners of the county. The court, in meeting this condition, used the following language:

"There was no provision made therein to indicate that the parties were intending to confine the agreement to the limits of the city as they existed on the said 11th day of September, 1899, and under the circumstances it cannot, in reason, be asserted that the parties only intended to include the limits as they then were, and not as they might thereafter be extended. The right of the city of South Bend to enlarge her boundaries under the laws of this State is governmental, which it cannot bargain away, and it may be presumed that appellant under its contract whereby it agreed to issue the transfer tickets within the city limits must have contemplated that the city in the future might exercise the right of annexing territory, and thereby extend its limits. Upon no view of the case can the provision 'within the limits of the city' be interpreted to have been intended under the agreement embraced in the proposition made by appellant to apply only to such limits as then fixed. * * *

"This agreement, as we have seen, cannot be held to apply only to passengers who are transported on appellant's cars within the old limits of the city, but must be held to apply to, and include, all passengers whose destination is within the limits of the city as they were extended by the

annexation of the territory in controversy. This extension, as we have said, by the municipal authorities, was the exercise of governmental powers. In a legal sense, the city is a unit, although its boundaries may be changed from time to time by extension, and all persons within the limits thereof as extended become bound by, and must yield obedience to, its ordinances. It certainly, in reason, cannot be asserted that an ordinance adopted by a city must, in its operation, forever be confined to the limits of the municipality as they were at the time it was passed, and cannot become operative in territory thereafter annexed and made a part of the corporation. And with no more force can it be said in this case, under the circumstances, that the agreement of appellant in regard to issuing transfer tickets to passengers is not operative within the limits of the city as thereafter extended. In support of this proposition see McCallie *v.* The Mayor, et al., 3 Head. 317; St. Louis, etc., Co. *v.* St. Louis, 46 Mo. 121; Town of Toledo *v.* Edens, 59 Iowa 352, 13 N. W. 313; Town of Milwaukee *v.* Milwaukee, 12 Wis. 93, 20 Am. & Eng. Ency. of Law, p. 1152." [7]

In Baltimore *v.* United Railway & Electric Co.,[8] the court held that a percentage tax upon the gross receipts of a street railway company within the limits of the city, imposed in consideration of a grant of a franchise to use the city streets, applied to all private rights of way in what afterwards became city streets, and to legislative grants of ways in highways that became city streets by annexation.

In construing public contracts, such as those under discussion, the rule is to construe strictly against the company and liberally in favor of the public.[9]

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[7] See, also, Rogers Park Water Co. *v.* Fergus, 178 Ill. 571, 53 N. E. 363; People *v.* Chicago Telephone Co., 220 Ill. 238, 77 N. E. 245.

[8] 107 Md. 250, 68 Atl. 557, 14 L. R. A. (N. S.) 805.

[9] See the case of Indiana Railway Co. *v.* Hoffman, 161 Ind. 593, 69 N. E. 399; also the recent case of Norfolk & Portsmouth Traction Co. *v.* City of Norfolk, 115 Va. 169, 78 S. E. 545.